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RESOLUTION NO.

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE CALLING AND GIVING NOTICE OF, ON ITS OWN MOTION, THE SUBMISSION TO THE ELECTORS OF THE CITY OF SAN JOSE, AT THE SPECIAL MUNICIPAL ELECTION TO BE HELD ON JUNE 8, 2010, A BALLOT MEASURE PROPOSAL RELATED TO CARDROOMS

WHEREAS, Charter Section 1600 authorizes the City Council to set the date for a Special Municipal Election; and

WHEREAS, the City Council desires to submit to the electors of the City of San José at a Special Municipal Election a ballot measure proposal to increase the Cardroom Tax, to expand the number of cardroom tables and to make other modifications to the City's Municipal Code regarding permissible card games and betting limits;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:

SECTION 1. A Special Municipal Election is hereby called and ordered to be held in the City of San José on June 8, 2010, for the purpose of voting on a ballot measure proposal to increase the Cardroom Tax, to expand the number of cardroom tables and to make other modifications to the City's Municipal Code regarding permissible card games and betting limits.

SECTION 2. The proposed ballot measure will be placed on the ballot for the June 8, 2010 election in the following form:

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CARDROOM MEASURE

Shall an ordinance be adopted to increase the Cardroom Tax rate on gross revenues from 13% to 15%, increase the number of cardroom tables by 18, permit any card game authorized under State law consistent with City regulations and betting limits as authorized under State law, all subject to City audit and oversight?

YES	
NO	

SECTION 3. The City Council hereby requests the Board of Supervisors of the County of Santa Clara, California to permit the Registrar of Voters of Santa Clara County to render to the City of San José such services as the City Clerk of the City of San José may request relating to the conduct of the above-described Special Municipal Election with respect to the following matters:

Coordination of election precincts, polling places, voting booths, voting systems and election officers; Printing and mailing of voter pamphlets; Preparation of tabulation of result of votes cast.

SECTION 4. The City Council hereby requests that the Registrar of Voters of the County of Santa Clara consolidate the Special Municipal Election called and ordered to be held on June 8, 2010 with any other election that may be held on that date.

SECTION 5. The City Council hereby authorizes the Board of Supervisors of Santa Clara County, California to canvass the returns of the Special Municipal Election.

SECTION 6. The City Council hereby directs the City Clerk to reimburse the County of Santa Clara in full for any of the above-mentioned services which may be performed by

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the Registrar of Voters, upon presentation of a bill to the City, with funds already appropriated to the City Clerk for election purposes.

SECTION 7. The City Council hereby directs the City Clerk to take all actions necessary in order to facilitate the Special Municipal Election in the time frame specified herein and comply with provisions of the Elections Code of the State of California, City Charter, Ordinances, Resolutions and Policies with regard to the conduct of the Special Municipal Election.

SECTION 8. Pursuant to Section 12111 of the California Elections Code and Section 6061 of the California Government Code, the City Council hereby directs the City Clerk to (a) cause a synopsis of the proposed measure to be published in the San José Mercury News, a newspaper of general circulation within the City of San José; (b) consolidate the Notice of Measure to be Voted with the Notice of Election into a single notice; (c) [cause copies of the proposed measure to be printed in convenient pamphlet form and in type of not less than 10-point and cause copies of that pamphlet to be mailed to each of the qualified electors of the City of San José] OR [cause the following statement to be printed in the impartial analysis to be prepared by the City Attorney: "If you would like to read the full text of the measure, see www.sanjoseca.gov/clerk/elections/Election.asp or call 408-535-1260 and a copy will be sent at no cost to you."]; and (d) do all other things required by law to submit the specified measure above to the electors of the City of San José at the Special Municipal Election, including causing the full text of the proposed measure to be made available in the Office of the City Clerk at no cost and posted on the City Clerk's website.

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SECTION 9. Pursuant to Sections 9282 and 9285 of the California Elections Code, the City Council hereby approves the submittal of direct arguments for and against the ballot measure as well as rebuttal arguments.

SECTION 10. The City Council hereby directs the City Clerk to transmit a copy of any measure qualifying for placement on the ballot to the City Attorney for preparation of an impartial analysis.

ADOPTED this _____ day of _____, 2010, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

CHUCK REED
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk

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EXHIBIT A
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CARDROOM MEASURE

BE IT ORDAINED BY THE PEOPLE OF THE CITY OF SAN JOSE:

SECTION 1. Section 4.77.030 of Chapter 4.77 of Title 4 of the San José Municipal Code is hereby amended to read as follows:

4.77.030 Payment of Tax

- A. Each permittee operating a cardroom shall pay an annual minimum tax of one hundred fifty dollars (\$150.00) per year, plus an additional tax in the amount of eighteen dollars (\$18.00) per employee based on the average number of employees, not to exceed a maximum of twenty-five thousand dollars (\$25,000) (hereinafter the "base tax").
- B. In addition to the base tax, each permittee operating a cardroom with total annual gross revenues in excess of ten thousand dollars (\$10,000) shall pay a monthly tax in an amount equal to ~~thirteen~~ fifteen percent of total monthly gross revenues.

SECTION 2. Chapter 4.77 of Title 4 of the San José Municipal Code is hereby amended to add a new section, to be numbered, entitled and to read as follows:

4.77.180 Amendment or Repeal

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Chapter 4.77 of Title 4 of the San José Municipal Code may be repealed or amended by the City Council without a vote of the people. However, as required by Chapter XIII C of the California Constitution, voter approval is required for any amendment provision that would increase the rate of any tax levied pursuant to this Ordinance. The People of the City of San José affirm that the following actions shall not constitute an increase of the rate of a tax:

- A. The restoration of the rate of the tax to a rate that is no higher than that set by this Ordinance, if the City Council has acted to reduce the rate of the tax;
- B. An action that interprets or clarifies the methodology of the tax, or any definition applicable to the tax, so long as interpretation or clarification (even if contrary to some prior interpretation or clarification) is not inconsistent with the language of this Ordinance;
- C. The establishment of a class of Person that is exempt or excepted from the tax or the discontinuation of any such exemption or exception (other than the discontinuation of an exemption or exception specifically set forth in this Ordinance); or
- D. The collection of the tax imposed by this Ordinance, even if the City had, for some period of time, failed to collect the tax.

SECTION 3. Section 16.02.470 of Chapter 16.02 of Title 16 of the San José Municipal Code is hereby amended to read as follows:

16.02.470 Permissible Games

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“Permissible Games” are Controlled Games that have been approved by the Administrator pursuant to Chapter 16.18 of this Title. ~~listed in Resolution Number 63771, passed by the City Council on June 9, 1992 and modified by the substitution of any Controlled Game that the Administrator authorizes a Cardroom Permittee to play through the substitution procedure set out in Chapter 16.18.~~

SECTION 4. Section 16.04.020 of Chapter 16.04 of Title 16 of the San José Municipal Code is hereby amended to read as follows:

16.04.020 Cardroom and Card Table Limitation

- A. The maximum number of Card Tables permitted in the City shall be ~~eighty (80)~~ ninety-eight (98) tables, unless and until otherwise authorized by a vote of the people.
- B. The maximum number of Cardrooms permitted in the City shall be two (2), unless and until otherwise authorized by a vote of the people.
- C. The maximum number of Card Tables at any one (1) Cardroom shall be ~~forty-nine (49)~~ nine (9), unless and until otherwise authorized by a vote of the people.

SECTION 5. Section 16.04.030 of Chapter 16.02 of Title 16 of the San José Municipal Code is hereby amended to read as follows:

16.04.030 Expansion of Gambling

- A. The City Council shall not take any action to expand the amount of Cardroom Gambling in the City unless and until otherwise authorized by a vote of the people.

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B. For purposes of this Section, expansion shall mean:

1. Any increase in the number of Cardrooms or Card Tables as specified in Section 16.04.020 above;

~~2. Any increase in bet limits as specified in this Title;~~

~~23.~~ The use of slot machines or devices, or gambling devices as defined by State Gambling Law;

~~34.~~ Any form of Gambling which was not allowed under this Code on or before June 30, 1996, or which is prohibited under State Gambling Law on or before June 30, 1996; ~~or~~

~~5. Any increase in the total number of Games beyond the twenty-one (21) authorized pursuant to Resolution Number 63771, adopted June 9, 1992.~~

~~C. Nothing herein shall limit the authority of the Administrator to substitute Games on a one for one basis or to modify the rules of a Permissible Game consistent with the provisions of this Title.~~

SECTION 6. Section 16.18.040 of Chapter 16.18 of Title 16 of the San José Municipal Code is hereby amended to read as follows:

16.18.040 Permissible Games

A. The only ~~e~~C~~o~~n~~t~~r~~o~~l~~l~~e~~d~~ ~~g~~G~~a~~m~~e~~s that shall be played on the premises of a permitted Cardroom are Permissible Games.

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B. No Game shall be played at any permitted Cardroom unless:

~~1. It is a Controlled Game listed as a Permissible Game or a substitution is authorized by the Administrator pursuant to the procedure set out in Section 16.18.050. this Chapter; and~~

~~2. It is a Controlled Game pursuant to State Gambling Law.~~

C. The Cardroom Permittee shall file with the Administrator the rules on the manner in which each Permissible Game is played and such other reports regarding the rules of Controlled Games as are required to be filed pursuant to State Gambling Law.

D. The Cardroom Permittee and Stock Ownership Licensees shall allow the playing of Permissible Games only in strict conformity with the rules approved by the Administrator.

SECTION 7. Section 16.18.050 of Chapter 16.18 of Title 16 of the San José Municipal Code is hereby amended to read as follows:

16.18.050 Substitution of Permissible Games List and Modification of Rules of Permissible Games

A. The Administrator is authorized to ~~substitute~~ place Controlled Games on the Permissible Games list on a one-for-one basis and to permit a modification of the rules of a Permissible Game.

B. A Cardroom Permittee may request authorization in writing to the Administrator ~~a substitution of one (1) proposed Permissible Game for one (1) that is already on~~

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~~the list of Permissible Games~~ for placement of a Controlled Game on the Permissible Game list.

~~C. A Cardroom Permittee may request authorization in writing to the Administrator to substitute a proposed Permissible Game not already on the list of Permissible Games for one that is currently on the list, or to propose a modification of the rules of a Permissible Game.~~

DC. The Cardroom Permittee's written request shall include the following:

1. The rules of the proposed Permissible Game ~~or modification of the Rules of a Permissible Game and the name of the Permissible Game that the Permittee will no longer play, if applicable;~~
2. Evidence that the proposed Permissible Game is a Controlled Game authorized under State Law, including, but not limited to specific written authorization by the California Department of Justice or the California Gambling Control Commission; and
3. Such other information as the Administrator may require in order to be assured that the Game ~~for which substitution is requested~~ will be played in strict conformity with State Gambling Law and the provisions of this Title.

ED. The Administrator shall begin a review of the written request and an investigation into whether or not the proposed Permissible Game is a Controlled Game authorized under State Gambling Law after receiving the written request and all information the Administrator requests from the Cardroom Permittee.

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~~FE.~~ The Administrator shall ~~authorize~~reject the ~~substitution or rule modification~~
addition of the proposed Permissible Game to the Permissible Game list only if
he or she cannot make~~s~~ all of the following findings:

1. The proposed Permissible Game is a Controlled Game under State Gambling Law including either written authorization from the California Department of Justice or the California Gambling Control Commission or a final court determination.
2. The playing of the proposed Permissible Game ~~or playing the Permissible Game under the proposed rule modification~~ will not increase the difficulty of enforcement or tend to undermine the effective regulation and control of Cardrooms.
3. The playing of the proposed Permissible Game ~~or playing the Permissible Game under the proposed rule modification~~ does not create or enhance the dangers of unsuitable, unfair, or illegal methods or activities in the conduct of Controlled Gambling.
4. The playing of the proposed Permissible Game ~~or playing the Permissible Game under the proposed rule modification~~ does not conflict with Federal or State law or this Title.
5. The playing of the proposed Permissible Game ~~or playing the Permissible Game under the proposed rule modification~~ is consistent with the public interest and the policies of this Title.
6. The playing of the proposed Permissible Game ~~or under the rule modification~~ is available to all Cardroom Permittees.

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~~7. The Playing of the Permissible Game under the proposed rule modification does not alter the fundamental or essential characteristics of the Permissible Game.~~

~~GE.~~ The Administrator is authorized to apply such terms, conditions, and limitations upon the play of any proposed Permissible Game as the Administrator deems necessary in order to make the findings required under Subparagraph ~~FE.~~

~~HG.~~ The Administrator's decision authorizing the ~~substitution of the~~ proposed Permissible Game ~~for one already on the list of Permissible Games or rule modification~~ shall be in writing and shall be served upon the Cardroom Permittee.

~~IH.~~ No proposed Permissible Game ~~or a Permissible Game played under modified rules~~ shall be played by any Cardroom Permittee until after the Administrator serves upon the Cardroom Permittee the authorization placing the proposed Permissible Game onto the list of Permissible Games ~~or modifying the rules of the Permissible Game.~~

SECTION 8. Section 16.18.070 of Chapter 16.18 of Title 16 of the San José Municipal Code is hereby amended to read as follows:

16.18.070 Limitations on Bets

A. No Cardroom Permittee, Owner, Licensee, or Employee shall allow, permit, or suffer any person to make any single bet or wager ~~in excess of Two Hundred Dollars (\$200)~~ on any single betting square for any single hand for a California Game in excess of the amount permitted under State Gambling Law.

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- B. No Cardroom Permittee, Owner, Licensee, or Employee shall allow, permit or suffer any person playing in any Game to make an Ante, single bet, or raise ~~in excess of Two Hundred Dollars (\$200)~~ per wager in any American poker game in excess of the amount permitted under State Gambling Law.
- C. No Cardroom Permittee, Owner, Licensee, or Employee shall allow, permit, or suffer any person to make a Backline Bet on any California Game played on the Cardroom Premises unless all of the following conditions exist:
1. It is made on a Card Table with a layout designed for Backline Betting that is approved by the Administrator; and
 2. No backline bet can be placed on a top of a bet that is already on the table.
- D. No Cardroom Permittee, Owner, Licensee, or Employee, shall allow, permit, or suffer:
1. Any Card Table on the Cardroom premises to have more than ten (10) betting squares per Player-Position.
 2. Any player at a Card Table to place a bet on more than ten (10) betting squares for any single hand of any California Permissible Game.
 3. Any player, other than a Player-Dealer, to place a bet ~~in excess of Two Hundred Dollars (\$200)~~ on any single betting square for any single hand of any California Game in excess of the amount permitted under State Gambling Law.

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- E. No Cardroom Permittee, Owner, Licensee, or Employee shall allow, permit, or suffer any person to make a wager of anything other than approved Gaming Chips and Plaques.

SECTION 9. This Ordinance shall be considered as adopted upon the date that the City Council certifies the results of the election, and shall go into effect 10 days after that date.